IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 444 OF 2002

1. M/s. Dolphin Adventures Sports Ltd., a Company registered under the Companies Act, 1958 having its registered office at F-10, Shanti Nagar Co-operative Industrial Estate, Vakola, Santa Cruz (East), Mumbai 400 055, having its office at Goa at Hawaii Beach, Dona Paula 403 004, represented by its Director, Mr. Malcolm Coelho, r/o Caranzalem, Panaji, Goa and

2. Mr. Malcolm Coelho, Managing Director of petitioner no.1, major in age, married, r/o Caranzalem, Panaji, Goa. ...Petitioners.

Versus

1. Mr. Augusto Casmiro de Sequeira Nazareth, s/o Dr. Mario de Sequeira Nazareth, major in age, married, Govt. service, r/o Miramar, Panaji, c'Goa,

2. Mr. Elba de Sequeira Nazareth, d/o late Angelo Maria de Souza, major in age, housewife, service, r/o Miramar, Panaji, Goa,

3. Mr. Oscar D'Souza, major in age, married, business-man, r/o 59, Camarcazana, Mapusa, Goa and

4. Mrs. Marlene D'Souza, major in age, married, r/o 59, Camarcazana, Mapusa, Goa. ...Respondents.

Shri S.G. Dessai, Senior Advocate with Shri Mandar Shirodkar, advocate for the petitionrs.

Shri M. B. D'Costa, with Shri J. A. Lobo, advocate for respondent nos.1 & 2.

Shri S. S. Kantak, advocate for respondent nos. 3 & 4.

CORAM : F. I. REBELLO, J.

DATE : 6th June, 2003.

ORAL ORDER

The respondent nos. 1 and 2 filed a suit against the present petitioners and respondent nos. 3 and 4 for a permanent injunction. Respondent no.2 is the daughter of late Angelo Maria de Souza and Ezilda. Respondent no.3 is the son of late Angelo Maria de Souza and Ezilda. During the life-time of Ezilda, Ezilda and respondent no.3 alongwith respondent no.4, his wife, entered into an agreement for sale with the petitioners herein, which is dated 20th October, 1992. In the said agreement in the recitals it was specifically set out that the respondent no.2 herein alongwith her husband have some interest/right and title to the property, but the vendors assured the petitioners herein that respondent nos. 1 and 2 would relinquish/renounce their rights and/or that they will ratify the sale deed. The petitioners thereafter started developing the property. It is based on that that the present suit came to be filed. The trial Court in a motion for interim relief, rejected the application for interim relief against which an appeal came to be preferred by the respondent nos. 1 and 2. The learned IInd Additional District Judge by the impugned Order dated 6th December, 2001, has restrained the petitioners herein as also the other respondents, from cutting any trees in the suit property and not putting up any construction therein,

without the consent of the plaintiffs, until the final disposal of the suit. They have also been directed to maintain status quo in respect of the suit property. It is this Order which is the subject-matter of the present writ petition.

2. The learned Appellate Court has proceeded on the footing that respondent nos.1 and 2 have an undivided right in the property. The petitioners themselves were aware of this right which respondent nos.1 and 2 had. The petitioners, it seems, proceeded on the footing that the respondent nos.1 and 2 be settled by respondent nos.3 and 4 and the late Ezilda. The rights of respondent nos.1 and 2 continues and subsists, as they have neither been settled, nor they were parties to the agreement for sale entered into by respondent nos.3 and 4 and the late Ezilda. Considering that, there is no infirmity in the order of the Appellate Court. The Order does not suffer from any error apparent on the face of the record and, consequently, no interference is called for.

3. Learned counsel for the petitioners contends that they are developing a road and they should be permitted to complete the road. Considering the prima facie finding given that respondent nos. 1 and 2 have a share in the property, and as they are not parties to the agreement, it is not possible to permit the petitioners to continue with

any development in the property. However, the parties are agreed that the evidence be recorded before the Commissioner. After the pleadings are completed as also other formalities including, framing of issues, the parties to move the trial Court for appointment of a Commissioner. Both the parties have made a statement in this Court that they consent to the appointment of a Commissioner.

With the above observations the Writ Petition is dispose of with no order as to costs.

F. I. REBELLO, J.

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